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**EXHIBIT A**



COMMUNITY  
LEGAL SERVICES IN  
EAST PALO ALTO

VIA ELECTRONIC MAIL  
July 16, 2015

U.S. Department of Homeland Security  
FOIA/PA  
The Privacy Office  
245 Murray Lane SW  
STOP-0655  
Washington, D.C. 20528-0655  
Fax: 202-343-4011  
E-mail: foia@hq.dhs.gov

U.S. Immigration and Customs Enforcement  
Freedom of Information Act Office  
500 12th Street, S.W., Stop 5009  
Washington, D.C. 20536-5009  
Fax: 202-732-4265  
E-mail: ice-foia@dhs.gov

RE: Request under the Freedom of Information Act  
Fee Waiver Requested

Dear Sir or Madam:

This letter constitutes a request for records made pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, on behalf of the members of the San Francisco Immigrant Legal Defense Collaborative, consisting of Asian Pacific Islander Legal Outreach, The Bar Association of San Francisco, Central American Community Resource Center, Center for Gender & Refugee Studies, Dolores Street Community Legal Services, Immigration Center for Women and Children, Immigrant Legal Resource Center, Lawyers' Committee for Civil Rights of the San Francisco Bay Area, Legal Services for Children, Pangea Legal Services, and University of San Francisco Immigration and Deportation Defense Clinic, as well as Community Legal Services in East Palo Alto (hereinafter "Requestors").

The Requestors seek records pertaining to "Alternatives to Detention" programs and practices that U.S. Immigration and Customs Enforcement (ICE), an agency of the U.S. Department of Homeland Security, employs to exercise supervisory authority over an individual whom ICE is seeking to remove from the United States. Through this request, Requestors seek to inform the

public on a matter of great public concern—the treatment of immigrants, including in particular the treatment of women with children who are in removal proceedings and seeking protection from harm in their home countries. The public should have access to information regarding the use of intensive supervision, including but not limited to the use of electronic monitoring, for a vulnerable population that has been the subject of significant media coverage as well as academic and human rights reports.<sup>1</sup> Because the use of Alternatives to Detention concerns a critical function of the government on a matter of significant public interest and concern, FOIA mandates its disclosure. *See* 5 U.S.C. § 552.

### Request for Agency Records

The Requestors seek disclosure of records that were prepared, received, transmitted, collected and/or maintained by Immigration and Customs Enforcement (“ICE”) and/or its components relating or referring to the information specified below.

The Requestors ask that any records that exist in electronic form be provided in electronic format on a compact disc.

### Definitions

For the purpose of this request, please use the following definitions:

“Alternatives to Detention” or “ATD” refers to any program, policy, or practice in which ICE or any of its offices, programs, or components (including but not limited to Enforcement and Removal Operations) or contractors or subcontractors exercises supervisory authority over an individual whom the Department of Homeland Security has placed in Immigration Court proceedings or is otherwise seeking to remove or against whom the Department of Homeland Security has obtained or issued an order of removal. ATD includes but is not limited to the Intensive Supervision Appearance Program (ISAP, including ISAP I and ISAP II), Enhanced Supervision Reporting (ESR), and Electronic Monitoring (EM) programs.

“Immigration and Customs Enforcement” or “ICE” refers to and includes any office, program, or component of the agency, including but not limited to Enforcement and Removal Operations.

<sup>1</sup> *See, e.g.,* Kyle Barron & Cinthya Santos Briones, “No Alternative: Ankle Monitors Expand the Reach of Immigration Detention,” (Jan. 6, 2015), available at <https://nacla.org/news/2015/01/06/no-alternative-ankle-monitors-expand-reach-immigration-detention>; Brianna Lee, “The Expensive Business Of Immigration Detention In The U.S.,” INTERNATIONAL BUSINESS TIMES (Sept. 11, 2014), available at <http://www.ibtimes.com/expensive-business-immigration-detention-us-1635018>; Editorial, “Cheaper, better alternatives to immigrant detention at the Northwest Detention Center,” Seattle Times (June 9, 2014), available at <http://www.seattletimes.com/opinion/editorial-cheaper-better-alternatives-to-immigrant-detention-at-the-northwest-detention-center/>; Kate Linthicum, “Push for cheaper alternatives to immigrant detention grows,” L.A. TIMES (May 31, 2014), available at <http://www.latimes.com/nation/la-na-immigration-detention-20140601-story.html>; Alfonso Serrano F., “ICE Slow to Embrace Alternatives to Immigrant Detention,” New America Media (Apr. 10, 2012), available at <http://newamericamedia.org/2012/04/ice-slow-to-embrace-alternatives-to-immigrant-detention.php>; Rutgers School of Law – Newark Immigrant Rights Clinic with American Friends Service Committee, *Freed but not Free: A Report Examining the Current Use of Alternatives to Immigration Detention* (July 2012), available at <http://www.law.newark.rutgers.edu/files/1reedbutnotFree.pdf>.



The term "records" as used herein includes but is not limited to all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audio tapes, faxes, files, e-mails, guidance, guidelines, evaluations, instructions, information analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training manuals, or studies.

The term "concerning" means referring or pertaining to, describing, evidencing, addressing, commenting on, responding to, showing, analyzing, reflecting, or constituting.

#### *Records Requested*

The records herein requested are those concerning:

- A. Policies, protocols, guidance, training materials, and communications regarding any requirements, standards, or factors involved in determining whether to place a person under ATD supervision. This includes but is not limited to any Risk Classification Assessment tool(s) associated with ATD.
- B. Policies, protocols, guidance, training materials, and communications related to the level of usage of ATD supervision. This request includes, but is not limited to, any increased use of ATD to supervise individuals or families whose cases are on an expedited, "surge," or "priority" docket or are otherwise prioritized or set for adjudication on an accelerated schedule before the Immigration Court, including those referenced in the March 24, 2105 Memorandum from Chief Immigration Judge Brian M. O'Leary to All Immigration Judges regarding "Docketing Practices Relating to Unaccompanied Children Cases and Adults with Children Released on Alternatives to Detention Cases in Light of the New Priorities, available <http://www.justice.gov/eoir/pages/attachments/2015/03/26/docketing-practices-related-to-uacs-and-awcatd-march2015.pdf>, and the September 10, 2104 Memorandum of Chief Immigration Judge Brian M. O'Leary regarding Docketing Practices Relating to Unaccompanied Children Cases in Light of the New Priorities, available at <http://www.justice.gov/eoir/statspub/Docketing-Practices-Related-to-UACs-Sept2014.pdf>
- C. Policies, guidance, protocols, trainings materials, and communications related to the requirements, standards, or factors considered by ICE and/or contracting companies such as BI Incorporated or GEO Group, for modifying the intensity of supervision—or ceasing supervision—under ATD.
- D. Policies, guidance, protocols, training materials, and communications related to ICE oversight or other involvement in ATD or other supervision following the placement of a person under ATD supervision.
- E. Policies, guidance, protocols, training materials, and communications related to means by which contract companies that administer ATD programs communicate with or provide or receive information from ICE officials and any agreements or practices or protocols pertaining to the sharing of any type of information about or documents pertaining to

individuals under ATD supervision between ICE and any private companies contracted to provide ATD services. This includes but is not limited to any policies, practices, or protocols for securing travel documents or any other documentation or information from persons subjected to ATD and any policies, practices, or guidelines for issuing warnings, notices, or other communications to individuals who are subject to ATD.

- F. Any and all records received, maintained, or created by any government agency or subdivision related to the creation, implementation, and oversight of the Memorandum to ICE Field Office Directors with subject line "Eligibility Criteria for Enrollment into the Intensive Supervision Appearance Program (ISAP) and the Electronic Monitoring Device (EMD) Program," sent on May 11, 2005. This includes any revised or updated memoranda that override, modify, supplement, or clarify the policies set forth in the May 11, 2005 Memorandum.<sup>2</sup> This also includes any other related policy memoranda addressing the similar subject matter in full or in part.
- G. Any records related to or concerning cost comparisons between BI Incorporated and government performance of contracts or agreements for the provision of services and products used in ISAP I and ISAP II. See 48 C.F.R. § 7.302 (2005), <http://www.gpo.gov/fdsys/pkg/CFR-2005-title48-vol1/xml/CFR-2005-title48-vol1-part7-subpart7-3.xml>.
- H. Policies, guidance, procedures, training, and any other documents concerning or related to the determination of the number of slots at each base year site found on B-66 of the Intensive Supervision Appearance Program (ISAP) II, Section C -- Statement of Work ("ISAP II SOW").<sup>3</sup>
- I. Records of the contractor reports as required to be produced by the ISAP II SOW as follows:
  1. From January 2014 – present date for individuals under the jurisdiction of the San Francisco Enforcement and Removal Operations Field Office: All "Daily Emergency Reports" as described at SOW 7.1.1.
  2. From January 2014 – present date: all "Weekly Average Daily Cost and Average Length in Program Reports" as described at SOW 7.1.5.
  3. From January 2014 – present date: all "Monthly Program Progress Reports" as described at SOW 7.1.6.
  4. From January 2014 – present date: all "Quarterly Program Reports," as described at SOW 7.1.7.
  5. From January 2009 – present date: all "Annual Reports" as described at SOW 7.1.8.

<sup>2</sup> The full text of the May 11, 2005 Memorandum is available at [http://www.ice.gov/doclib/foia/dro\\_policy\\_memos/dropolicymemoeligibilityfordroisapanemdprograms.pdf](http://www.ice.gov/doclib/foia/dro_policy_memos/dropolicymemoeligibilityfordroisapanemdprograms.pdf).

<sup>3</sup> The full text of the Statement of Work is available at <http://www.ice.gov/doclib/foia/contracts/biincorporatedhscecr09d00002.pdf>.



6. From January 2014 – present date: all “Ad Hoc Reports” as described at SOW 7.1.9.
7. From January 2014 – present date: all “DRO/Contractor Meeting Minutes” as described at SOW 7.1.10.
- J. Any records related to or concerning the determination of the independent government estimate (“IGE”) for the cost of the ISAP II program, as stated on page 4 of the Government Accountability Office (“GAO”) decision identified by file numbers B-401694; B-401694.2.<sup>4</sup>
- K. Any records related to or concerning cost overruns associated with the ISAP II program, including, but not limited to, cost overruns incurred in relation to any contracts or agreements between ICE and BI Incorporated or the Geo Group Incorporated or other contractor.
- L. Any records related to or concerning agreements or contracts between any private entities and ICE for the procurement of services and/or technology used by ICE in the ATD program during the period from 2009 through April 30, 2014, and between May 1, 2014, and the present date. This request includes any agreements or contracts between providers of ATD equipment and services – such as BI Incorporated, the Geo Group Incorporated, or any contracting company – and ICE which require ICE to purchase a minimum quantity of ATD-related equipment or a minimum amount of ATD-related services.
- M. Any records pertaining to the effects or impact of participation in the ATD program, including but not limited to any possible health effects of EM, including for those who may be pregnant, nursing, or have other health conditions.
- N. Any audits, studies, reports, analysis, or examinations related to the efficacy of ATD.

#### Request for Expedited Processing

Expedited processing is warranted because there is “an urgency to inform the public about actual or alleged federal government activity” by organizations “primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II). This request implicates matters of urgent public concern—namely, government policies, procedures, practices related to ATD for women and children migrants, as well as related costs, assessments, and outcomes of ATD.

There is “an urgency to inform the public” about this government activity because of heightened interest in both the government’s detention and ATD practices with respect to migrant families, and in particular women arriving with children. Further, attorneys and other services providers need to understand the relevant policies, procedures, and practices to serve this population.

The issues surrounding detention of and alternatives to detention for women and children migrants is one of heightened public concern, and warrants prioritization of this request over...

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<sup>4</sup> The full text of the GAO decision is available at <http://www.gao.gov/assets/390/387382.pdf>.

other requests that were made earlier. The justifications for family detention, and the feasibility, costs, specifics, and outcomes for ATD, are matters of great current public interest. They have received extensive news coverage and attention in Congress. ATD in particular has received heightened interest in conjunction with calls to end mass family detention entirely. On June 1, thirty-three members of the Senate sent Secretary Johnson, stating that a system of mass family detention is inconsistent with our nation's "moral values" and explicitly highlighting the fact that "there are many alternatives to detention that are more human, cost-efficient, and will keep families together." Letter to Secretary Johnson from Members of the Senate (June 1, 2015), available at

[http://immigrantjustice.org/sites/immigrantjustice.org/files/Senate\\_FamilyDetentionLtr\\_DHS\\_2015\\_06\\_01.pdf](http://immigrantjustice.org/sites/immigrantjustice.org/files/Senate_FamilyDetentionLtr_DHS_2015_06_01.pdf). On May 27, 136 members of the House of Representatives sent a letter to DHS Secretary Jeh Johnson similarly asking the administration to end mass family detention in its entirety. See Letter to Secretary Johnson from Members of the House of Representatives (May 27, 2015), available at [https://lofgren.house.gov/uploadedfiles/family\\_detention.pdf](https://lofgren.house.gov/uploadedfiles/family_detention.pdf)

Moreover, on May 12, 2015, 188 immigrants' rights, faith-based, civil rights, human rights, survivor's rights, and criminal justice reform organizations, international educators, and legal service providers wrote President Obama to call for the end of family detention, arguing that detention of mothers and children is harmful and inhuman, and expressly noting the availability of "community-based alternatives to detention (ATD) – not detention – to mitigate [any flight] risk." Joint Letter to President Obama Calling for End to Family Detention (May 13, 2015), available at <http://www.hrw.org/news/2015/05/13/joint-letter-letter-president-obama-calling-end-family-detention>.

Media attention to the issue of family detention and ATD for women and children has been heightened. See, e.g., Elise Foley, "Backlash Against Mass Family Immigrant Detention Grows As Senate Democrats Pile On," *Huffington Post* (June 2, 2015), available at [http://www.huffingtonpost.com/2015/06/02/family-immigrant-detention\\_n\\_7495282.html](http://www.huffingtonpost.com/2015/06/02/family-immigrant-detention_n_7495282.html) (reporting on call to end family detention and on statements that "DHS should use alternatives to detention, such as ankle monitoring bracelets"); Representative Judy Chu, "The time to end family detention is now" (op-ed), *San Gabriel Valley Tribune* (May 29, 2015), available at <http://www.sgvtribune.com/opinion/20150529/the-time-to-end-family-detention-is-now-judy-chu> ("DHS should implement community-based alternatives to detention that cost much less and have been proven to be effective."); Molly Hennessy-Fiske, "Democrats to Homeland Security: Free migrant families from 'jail-like' sites," *Los Angeles Times* (May 27, 2015), available at <http://www.latimes.com/nation/nationnow/la-na-immigrant-family-detention-20150527-story.html>; Caroline May, "House Dems Call for End to Family Detention for Illegal Immigrants," *Breitbart News* (May 27, 2015), available at <http://www.breitbart.com/big-government/2015/05/27/house-dems-call-for-end-to-family-detention-for-illegal-immigrants/>; Ester Yu-His Lee, "The Movement To End Immigrant Family Detention Is Picking Up Steam. Here's Why," *Think Progress* (May 29, 2015) (discussing alternatives to detention and call to end family detention).

In addition, organizational requesters include those that are "primarily engaged in disseminating information." § 552(a)(6)(E)(v)(II). As explained in the section below, the organizations listed below conduct outreach, public education, and training, reaching a broad audience in their local



communities and nationwide. Information obtained through this FOIA will contribute to their public materials, including reports, newsletters, handbooks, and/or briefings, which they will make available through dissemination and posting on their websites.

### The Requesters

Founded in 1975, **Asian Pacific Islander Legal Outreach (APILO)** is a community-based, social justice organization serving the Asian and Pacific Islander, and other communities of the Greater Bay Area. With offices in Oakland and San Francisco, its work is focused in the areas of violence against women/family law, immigration and immigrant rights, senior law and elder abuse prevention, the rights of those with disabilities, anti-human trafficking, youth violence prevention, affordable housing preservation and tenants' rights, and other social justice issues. Its mission is to provide culturally competent and linguistically appropriate legal representation, social services, and advocacy for the most marginalized segments of the community including low-income women, seniors, recent immigrants, and youth. Its diverse staff provides holistic legal, social, and educational services in more than a dozen languages.

**The Bar Association of San Francisco (BASF)** champions equal access to justice and promotes humanity, excellence, and diversity in the legal profession. It provides legal services to disadvantaged and underserved individuals in San Francisco, and creates opportunities for legal service in the community and encourages participation by its members. BASF houses the lead attorney coordinator position for the SFILDC and administers the pro bono attorney of the day (AOD) program, which allows unrepresented individuals appearing before the San Francisco Immigration Court to briefly consult with experienced immigration attorneys on a pro bono basis. The AOD then appears as "friend of the court" with the unrepresented individuals at master calendar hearings. BASF also administers the Volunteer Immigration Program (VIP), which matches low-income unrepresented individuals in non-detained immigration court proceedings with pro bono attorneys. VIP offers opportunities for full scope representation and mentoring. BASF distributes and publishes various educational and professional materials online and in paper format to its members and other practitioners.

Founded in 1986 by Salvadorans fleeing the Salvadoran Civil War, **Central American Resource Center (CARECEN)** was founded to address the needs of Salvadorans and other Central Americans who fled the region amid the civil wars, political repression, and counter-insurgencies of the 1980s. Today CARECEN is a multi-faceted community organization that empowers and responds to the needs, rights, and aspirations of Latino, immigrant, and under-resourced families in the Bay Area, building community leadership to pursue equity and justice. We advocate for immigrant rights, juvenile justice, and Latino health rights. We are committed to strengthening our cultural, social, and historical ties to Central America and countries of origin. Our social services include the: Immigration Legal Program, Second Chance Youth Program and Tattoo Removal Clinic, Family Wellness, Health Promotion, and Community Building.

**The Center for Gender & Refugee Studies (CGRS)**, housed at the University of California Hastings College of the Law, works to protect the fundamental human rights of refugees--with a



focus on women and children--through litigation, scholarship, expert consultations, and the development of policy recommendations. Attorneys at the Center include authors of scholarly books and law review articles regarding asylum, experts who advise other attorneys representing asylum seekers, and practicing attorneys who represent asylum seekers throughout the United States. CGRS conducts multiple national trainings each year, including both in-person and web-based trainings, and has published comprehensive studies documenting the procedures and treatment of women and child asylum seekers in the United States. Its reports, studies, and policy briefs are made available via publication in law journals or by academic and/or trade press, via distribution to email list-serves and individuals, and/or on its public website. Each year, CGRS provides direct assistance in several hundred cases of asylum seekers, including many women and children from Mexico and Central America. Its assistance in these cases typically includes the dissemination of relevant materials compiled and/or produced by CGRS. CGRS will make widely available to the public information requested through this FOIA via its website and/or by other means discussed above.

**Community Legal Services in East Palo Alto (CLSEPA)** provides legal assistance to low-income individuals and families in East Palo Alto and surrounding communities. Its immigration law practice provides direct legal representation to hundreds of adults and children each year. It has played a key role in responding to the needs that have arisen in connection with the expedited dockets for unaccompanied minors and families who recently arrived in the United States and have cases pending before the San Francisco Immigration Court. In addition to its provision of direct legal services to children and families on the expedited dockets of the San Francisco Immigration Court, CLSEPA helps staff the "Attorney of the Day" (AOD) program through the Bar Association of San Francisco, which involves having a pro bono attorney or team of attorneys in the courtroom for master calendar hearings, including in particular those conducted for the expedited dockets. Among other tasks, AODs assist unrepresented individuals in seeking continuances to allow time to secure counsel and prepare their cases for presentation to the immigration court. CLSEPA is also involved in training other attorneys to serve as AODs for the expedited docket. CLSEPA maintains a website, <http://www.clsepa.org>, and additionally disseminates information about immigration court matters and the expedited dockets for unaccompanied minors and families through community presentations and through its partnerships with the private pro bono bar. CLSEPA is located in East Palo Alto, California.

**Dolores Street Community Services (DSCS)** provides community outreach services and pro bono deportation defense to low-income immigrants. DSCS is a registered non-profit organization and an active participant in the San Francisco Immigrant Legal and Education Network ("SFILN"), which supports immigrants facing deportation in removal proceedings and disseminates information to the public through trainings and workshops as well as published educational and informational materials. DSCS represents numerous detained and formerly detained individuals who are seeking protection from persecution and torture in their countries of origin, many of whom are either subject to the Intensive Supervision Appearance Program or Alternatives to Detention.

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Founded in 1979, the **Immigrant Legal Resource Center (ILRC)** is a national non-profit resource center that provides legal training, educational materials, publications, and advocacy support to individuals and groups assisting low-income persons with immigration matters. The



ILRC works with a broad array of individuals, agencies, and institutions including immigration attorneys and advocates, criminal defense attorneys, civil rights advocates, social workers, law enforcement, judges, and local and state elected officials.

The **Immigration Center for Women and Children (ICWC)** is a non-profit legal organization providing affordable immigration services to underrepresented immigrants in California. ICWC strives to provide security and stability for children who are abused, abandoned or neglected and for immigrants who are victims of domestic violence, sexual assault and other violent crimes. ICWC has locations in three metropolitan areas of California to better serve underserved communities throughout the state. In 2004, ICWC opened its doors in Los Angeles. ICWC replicated its model, and launched its San Francisco office in 2010. ICWC inaugurated its San Diego office in 2012, and its Oakland office in 2015. Using U.S. federal legislation, ICWC provides immigration legal services (U and T Visas, VAWA, and SIJS) to immigrants who are victims of crimes. The resulting immigration benefits allow women to permanently leave their abusers and create safe environments for families. ICWC's overall goal is to assist these victims of domestic violence, human trafficking, sexual assault, child abuse and other violent crimes in escaping abusive relationships, live in safety, and become self-sufficient.

**Lawyers' Committee for Civil Rights of the San Francisco Bay Area (LCCR)** combines direct legal services, policy advocacy and impact litigation strategies to advance the rights of immigrants, refugees and communities of color. We marshal the resources of the private bar to identify legal issues and address barriers to full inclusion in society for migrant, minority and low-income communities. In addition to defending immigrants' civil rights, a cornerstone of our work is our Asylum Program, now more than 30 years old, which pairs low-income asylum seekers with mentored pro bono counsel, who are trained and supported by Lawyers' Committee in their representation of the individuals we serve. Within the Asylum Program, Lawyers' Committee represents unaccompanied minors and families, including single parents with children, in their quest for immigration relief. Lawyers' Committee often uses the results of Freedom of Information Act (FOIA) requests in order to provide comprehensive representation to our clients. Notably, the Lawyers' Committee secured a key ruling in a recent Freedom of Information Act (FOIA) case against the federal government to enforce the right of asylum seekers and those who represent them to have access to Asylum Officers' interview notes. The decision came in a lawsuit that charged the government with violating FOIA by withholding asylum officer interview notes from applicants and their attorneys. The judge agreed that such notes are not exempt from FOIA and are crucial to fair representation in immigration proceedings.

Founded in 1975 as a nonprofit organization, **Legal Services for Children (LSC)** is one of the first non-profit law firms in the country dedicated to advancing the rights of youth. LSC's mission is to ensure that all children in the San Francisco Bay Area have an opportunity to be raised in a safe and stable environment with equal access to the services they need to become healthy and productive young adults. Our practice includes foster care, guardianship, education and immigration cases.

**Pangea Legal Services** is a nonprofit organization that provides low-cost and free legal services low-income immigrants at risk of deportation. In addition to direct legal services, Pangea also



advocates on behalf of the immigrant community through policy advocacy, education, and legal empowerment efforts. Pangea distributes a quarterly newsletter; has participated in national webinars, conferences, and international human rights forums; and has been featured in reports by Univision, Human Rights Watch, the Daily Law Journal, and The New Yorker.

The **University of San Francisco School of Law Immigration and Deportation Clinic** is one of the only clinics in the nation focused on representing unaccompanied alien children in their immigration cases. It represents children from all over California, who fall within the jurisdiction of the San Francisco Immigration Court, in their asylum and special immigrant juvenile status cases. In addition to providing pro bono legal services to children, it also represents San Francisco families who are recent arrivals in the United States and are currently in removal proceedings.

#### Limitation or Waiver of Search and Review Fees

The undersigned request a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) ("fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . educational or noncommercial scientific institution . . . or a representative of the news media") and 6 C.F.R. § 5.11(d)(1) (search fees shall not be charged to "representatives of the news media").

The information sought in this request is not sought for a commercial purpose. Requestors are primarily non-profit organizations that intend to disseminate the information gathered by this request to the public at no cost, including through the Requestors' websites and social media.

The organizations in the SFILDC and CLSEPA regularly disseminate information to private, government, and nonprofit legal practitioners and members of the public and media through trainings, written advisories, reports, newsletters, blogs, resource libraries, and action alerts. *See e.g.,* [www.ilrc.org](http://www.ilrc.org); <http://cgrs.uchastings.edu/>; <http://www.pangealegal.org/>; <http://www.clsepa.org/news/>; <http://www.dsos.org/content/blogcategory/40/79/>; <http://www.lccr.com/resource-library/reports/>; [www.sfbay.gov/sfildc/](http://www.sfbay.gov/sfildc/); <http://carecensf.org/blog.html>; <http://icwclaw.org/news/>; . The Requestors may also compile a report or other publication on the government's treatment of immigrants based on information gathered through this FOIA.

The "term 'a representative of the news media' means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii). The statutory definition does not require that the requestor be a member of the traditional media. As long as a requestor meets the definition in any aspect of its work, it qualifies for limitation of fees under this section of the statute. The Requestors qualify as a "representative of the news media" under the statutory definition, because they routinely gather information of interest to the public, use editorial skills to turn it into distinct work, and distribute that work to the public. *See Electronic Privacy Information Center v. Department of Defense,*

241 F. Supp. 2d 5 (D.D.C. 2003) (non-profit organization that gathered information and published it in newsletters and otherwise for general distribution qualified as representative of news media for purpose of limiting fees). Courts have reaffirmed that non-profit requestors who are not traditional news media outlets can qualify as representatives of the new media for the purposes of the FOIA, including after the 2007 amendments to the FOIA. *See, e.g., ACLU of Washington v. U.S. Dep't of Justice*, No. C09-0642RSL, 2011 WL 887731, at \*18 (D. Wash. Mar. 10, 2011) (finding that the ACLU qualifies as a "representative of the news media"). Accordingly, any fees charged must be limited to duplication costs.

#### Waiver or Reduction of All Costs

The undersigned Requestors seek a waiver or reduction of all costs pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), as "[d]ocuments shall be furnished without any charge . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." *See also* 6 C.F.R. § 5.11(k).

The public interest fee waiver provision "is to be liberally construed in favor of waivers for noncommercial requestors." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987). The Requestor need not demonstrate that the records would contain evidence of misconduct. Instead, the question is whether the requested information is likely to contribute significantly to public understanding of the operations or activities of the government, good or bad. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003). Disclosure of the information and report sought is in the public interest and will contribute significantly to the public's understanding of the treatment of immigrants subjected to intensive supervision such as electronic monitoring and other aspects of Alternatives to Detention. This is an increasingly pressing matter as courts have placed limits on the use of detention. *See, e.g., Order, RILR v. Johnson*, No. 15-cv-11 (Feb. 20, 2015). The information sought will be critical to further inform the public regarding the treatment of recently arrived immigrants in immigration court proceedings and whether Alternatives to Detention are being employed in appropriate circumstances and in an appropriate manner. The requested records relate directly to the operations or activities of the government that potentially impact fundamental rights and freedoms. The records are not sought for commercial use, and the Requestors plan to disseminate the information disclosed through print and other media to the public at no cost. As demonstrated above, the Requestors have both the intent and ability to convey any information obtained through this request to the public.

The Requestors state "with reasonable specificity that [their] request pertains to operations of the government," and "the informative value of a request depends not on there being certainty of what the documents will reveal, but rather on the requesting party having explained with reasonable specificity how those documents would increase public knowledge of the functions of the government." *Citizens for Responsibility and Ethics in Washington v. U.S. Dept. of Health and Human Services*, 481 F. Supp. 2d 99, 107-109 (D.D.C. 2006). In the event a waiver or reduction of costs is denied, please notify me in advance if the anticipated costs exceed \$100.



### Conclusion

In accordance with President Barack Obama's January 21, 2009 Memorandum regarding the Freedom of Information Act, "[a]ll agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA." Memorandum, Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 21, 2009). The President's Memorandum makes clear the importance of prompt and full disclosure of documents requested under the FOIA. Every effort should be made by the agency to disclose requested records and not withhold information that could be released to the public without compromising a significant government interest. The undersigned Requestors accordingly ask that this request will be considered in light of President Obama's directive regarding transparency and open government.<sup>5</sup>

We look forward to your reply to the records request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I). Please contact Avantika Shastri at (415) 782-9000 x. 8661 or Eunice Lee at (415) 581-8836 with any questions. Please supply all records to:

Avantika Shastri  
Lead Attorney, San Francisco Immigrant Legal Defense Collaborative  
Bar Association of San Francisco  
301 Battery Street, Third Floor  
San Francisco, CA 94111

If this request is denied in whole or in part, please justify all redactions by reference to specific FOIA exemptions. Please specify the search that was undertaken to locate records responsive to this request. We expect the government to release all reasonably segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or deny a waiver of fees.

Thank you for your consideration and prompt attention to this request.

Sincerely,

s/Avantika Shastri  
Avantika Shastri  
Lead Attorney, San Francisco Immigrant Legal Defense Collaborative  
Justice and Diversity Center  
Bar Association of San Francisco

s/Eunice Lee  
Eunice Lee  
Co-Legal-Director, Center for Gender & Refugee Studies

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<sup>5</sup> This is not a Privacy Act request and therefore notarized signatures have not been included.

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**EXHIBIT B**



**Avantika Shastri**

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**From:** ice-foia@dhs.gov  
**Sent:** Thursday, July 30, 2015 1:32 PM  
**To:** Avantika Shastri  
**Subject:** ICE FOIA Request 2015-ICFO-89856

July 30, 2015

Avantika Shastri  
 SFILDC  
 301 Battery Street, 3rd Floor  
 San Francisco, CA 94111

**RE: ICE FOIA Case Number 2015-ICFO-89856**

Dear Ms. Shastri:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated July 16, 2015, and to your request for expedited treatment and a waiver of all assessable FOIA fees. Your request was received in this office on July 30, 2015. Specifically, you requested records pertaining to "Alternatives to Detention" programs, including: A. Policies, protocols, guidance, training materials, and communications regarding any requirements, standards, or factors involved in determining whether to place a person under ATD supervision. This includes but is not limited to any Risk Classification Assessment tool(s) associated with ATD. B. Policies, protocols, guidance, training materials, and communications related to the level of usage of ATD supervision. This request includes, but is not limited to, any increased use of ATD to supervise individuals or families whose cases are on an expedited, "surge," or "priority" docket or are otherwise prioritized or set for adjudication on an accelerated schedule before the Immigration Court. C. Policies, guidance, protocols, trainings materials, and communications related to the requirements, standards, or factors considered by ICE and/or contracting companies such as BI Incorporated or GEO Group, for modifying the intensity of supervision-or ceasing supervision-under ATD. D. Policies, guidance, protocols, training materials, and communications related to ICE oversight or other involvement in ATD or other supervision following the placement of a person under ATD supervision. E. Policies, guidance, protocols, training materials, and communications related to means by which contract companies that administer ATD programs communicate with or provide or receive information from ICE officials and any agreements or practices or protocols pertaining to the sharing of any type of information about or documents pertaining to individuals under ATD supervision between ICE and any private companies contracted to provide ATD services. This includes but is not limited to any policies, practices, or protocols for securing travel documents or any other documentation or information from persons subjected to ATD and any policies, practices, or guidelines for issuing warnings, notices, or other communications to individuals who are subject to ATD. F. Any and all records received, maintained, or created by any government agency or subdivision related to the creation, implementation, and oversight of the Memorandum to ICE Field Office Directors with subject line "Eligibility Criteria for Enrollment into the Intensive Supervision Appearance Program (ISAP) and the Electronic Monitoring Device (EMD) Program," sent on May 11, 2005. This includes any revised or updated memoranda that override, modify, supplement, or clarify the policies set forth in the May 11, 2005 Memorandum. This also includes any other related policy memoranda addressing the similar subject matter in full or in part. G. Any records related to or concerning cost comparisons between BI Incorporated and government performance of contracts or agreements for the provision of services and products used in ISAP I and ISAP II. H. Policies, guidance, procedures, training, and any other documents concerning or related to the determination of the number of slots at each base year site found on B-66 of the Intensive Supervision Appearance Program (ISAP) II, Section C - Statement of Work ("ISAP II SOW"). I. Records of the contractor reports as required to be produced by the ISAP II SOW as listed in the original request. J. Any records related to or concerning the determination of the independent government estimate ("IGE") for the cost of the ISAP II program, as stated on page 4 of the Government Accountability Office ("GAO") decision identified by file numbers B-40 1694; B-40 1694.2; Sections K, L, M, N in orig. request.

Your request for expedited treatment is hereby denied.

Under the DHS FOIA regulations, expedited processing of a FOIA request is warranted if the request involves "circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual," 6 C.F.R. § 5.5(d)(1)(i), or "an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information," 6 C.F.R. § 5.5(d)(1)(ii). Requesters seeking expedited processing must submit a statement explaining in detail the basis for the request, and that statement must be certified by the requester to be true and correct. 6 C.F.R. § 5.5(d)(3).

Your request for expedited processing is denied because you do not qualify for either category under 6 C.F.R. § 5.5(d)(1). You have not established that lack of expedited treatment in this case will pose an imminent threat to the life or physical safety of an individual. The information sought in your request is retrospective and you have not established that the information would have a bearing on immediate or resultant future situations. In addition you are not primarily engaged in the dissemination of information to the public. You have not shown that you have the ability to educate the public beyond your limited constituency, nor have you established with the requisite specificity why you feel there is an urgency to inform your limited audience about past ICE actions. Qualifying urgency would need to exceed the public's right to know about government activity generally. Finally, you did not offer any supporting evidence of public interest that is any greater than the public's general interest in ATD.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, ICE processes FOIA requests according to their order of receipt. Although ICE's goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, ICE will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

As it pertains to your request for a fee waiver, after thoroughly reviewing your letter, ICE has determined that you have not presented a convincing argument that SFILDC is entitled to a blanket waiver of applicable fees.

The DHS FOIA Regulations at 6 CFR § 5.11(k)(2) set forth six factors to examine in determining whether the applicable legal standard for a fee waiver has been met. We will consider these factors in our evaluation of your request for a fee waiver:

- (1) Whether the subject of the requested records concerns "the operations or activities of the government";
- (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;
- (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons;
- (4) Whether the contribution to public understanding of government operations or activities will be "significant";
- (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and
- (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor.

As a requester, you bear the burden under FOIA of showing that the fee waiver requirements have been met. Based on my review of your July 16, 2015 letter and for the reasons stated herein, I have determined that your fee waiver request is deficient because your request has failed to satisfy factors 3, 4, 5, and 6. Since your request for a fee waiver has failed to satisfy each of the required factors, I am denying your fee waiver request.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requesters. As a non-commercial requester, you will be charged 10 cents per page for duplication; the first 100 pages are free, as are the first two hours of search time, after which you will pay the per quarter-hour rate (\$4.00 for clerical personnel, \$7.00 for professional personnel, \$10.25 for managerial personnel) of the searcher. We will construe the submission of your request as an agreement to pay up to \$25.00. You will be contacted before any further fees are accrued.

You have the right to appeal the determination to deny your request for expedited treatment and a fee waiver. Should you wish to do so, please send your appeal following the procedures outlined in the DHS regulations at 6 Code of Federal Regulations § 5.9 and a copy of this letter to:

U.S. Immigration and Customs Enforcement  
Office of Principal Legal Advisor  
U.S. Department of Homeland Security  
Freedom of Information Act Office  
500 12th Street, S.W., Stop 5009  
Washington, D.C. 20536-5009

Your appeal must be received within 60 days of the date of this letter. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

ICE has queried the appropriate program offices within ICE for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2015-ICFO-89856**. Please refer to this identifier in any future correspondence. To check the status of an ICE FOIA/PA request, please visit <http://www.dhs.gov/foia-status>. Please note that to check the status of a request, you must enter the 2014-ICFO-XXXXX or 2015-ICFO-XXXXX tracking number. You may contact this office at (866) 633-1182. Our mailing address is 500 12th Street, S.W., Stop 5009, Washington, D.C. 20536-5009.

Regards,

ICE FOIA Office  
Immigration and Customs Enforcement  
Freedom of Information Act Office  
500 12th Street, S.W., Stop 5009  
Washington, D.C. 20536-5009

Telephone: 1-866-633-1182

Visit our FOIA website at [www.ice.gov/foia](http://www.ice.gov/foia)



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**EXHIBIT C**

*Freedom of Information Act Office*

U.S. Department of Homeland Security  
500 12<sup>th</sup> St SW, Stop 5009  
Washington, DC 20536



**U.S. Immigration  
and Customs  
Enforcement**

November 18, 2015

Avantika Shastri  
SFILDC  
301 Battery Street, 3rd Floor  
San Francisco, CA 94111

**RE: ICE FOIA Case Number 2015-ICFO-89856**

Dear Ms. Shastri:

This letter is the final response to your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated July 16, 2015. You have requested copies of the following:

Records pertaining to "Alternatives to Detention" programs, including: A. Policies, protocols, guidance, training materials, and communications regarding any requirements, standards, or factors involved in determining whether to place a person under ATD supervision. This includes but is not limited to any Risk Classification Assessment tool(s) associated with ATD. B. Policies, protocols, guidance, training materials, and communications related to the level of usage of ATD supervision. This request includes, but is not limited to, any increased use of ATD to supervise individuals or families whose cases are on an expedited, "surge," or "priority" docket or are otherwise prioritized or set for adjudication on an accelerated schedule before the Immigration Court. C. Policies, guidance, protocols, trainings materials, and communications related to the requirements, standards, or factors considered by ICE and/or contracting companies such as BI Incorporated or GEO Group, for modifying the intensity of supervision or ceasing supervision under ATD. D. Policies, guidance, protocols, training materials, and communications related to ICE oversight or other involvement in ATD or other supervision following the placement of a person under ATD supervision. E. Policies, guidance, protocols, training materials, and communications related to means by which contract companies that administer ATD programs communicate with or provide or receive information from ICE officials and any agreements or practices or protocols pertaining to the sharing of any type of information about or documents pertaining to individuals under ATD supervision between ICE and any private companies contracted to provide ATD services. This includes but is not limited to any policies, practices, or protocols for securing travel documents or any other documentation or information from persons subjected to ATD and any policies, practices, or guidelines for issuing warnings, notices, or other communications to individuals who are subject to ATD. F. Any and all records received, maintained, or created by any government agency or subdivision related to the creation, implementation, and oversight of the Memorandum to ICE Field Office Directors with subject line "Eligibility Criteria for Enrollment into the Intensive Supervision Appearance Program (ISAP) and the Electronic Monitoring Device (EMD) Program," sent on May 11, 2005. This



Freedom of Information Act Office

U.S. Department of Homeland Security  
500 12<sup>th</sup> St SW, Stop 5009  
Washington, DC 20536U.S. Immigration  
and Customs  
Enforcement

includes any revised or updated memoranda that override, modify, supplement, or clarify the policies set forth in the May 11, 2005 Memorandum. This also includes any other related policy memoranda addressing the similar subject matter in full or in part. G. Any records related to or concerning cost comparisons between BI Incorporated and government performance of contracts or agreements for the provision of services and products used in ISAP I and ISAP II. H. Policies, guidance, procedures, training, and any other documents concerning or related to the determination of the number of slots at each base year site found on B-66 of the Intensive Supervision Appearance Program (ISAP) II, Section C - Statement of Work ("ISAP II SOW"). I. Records of the contractor reports as required to be produced by the ISAP II SOW as listed in the original request. J. Any records related to or concerning the determination of the independent government estimate ("IGE") for the cost of the ISAP II program, as stated on page 4 of the Government Accountability Office ("GAO") decision identified by file numbers B-40 1694; B-40 1694.2; Sections K, L, M, N in orig. request

ICE has considered your request under the FOIA, 5 U.S.C. § 552.

A search of the ICE Office of Enforcement and Removal Operations (ERO) and the Office of Acquisitions (OAQ) for records responsive to your request produced 17 pages that are responsive to your request. After review of those documents, I have determined that portions of 17 pages will be withheld pursuant to Exemptions (b)(6), (b)(7)(C) of the FOIA as described below.

ICE has applied Exemptions (b)(6) and (b)(7)(C) to protect from disclosure names and identification numbers of law enforcement personnel.

**FOIA Exemption 6** exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right privacy. The types of documents and/or information that we have withheld may consist of social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are considered personal. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

**FOIA Exemption 7(C)** protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them

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**EXHIBIT D**





COMMUNITY  
LEGAL SERVICES IN  
EAST PALO ALTO

VIA OVERNIGHT and ELECTRONIC MAIL  
January 15, 2016

U.S. Immigration and Customs Enforcement  
Office of Principal Legal Advisor  
U.S. Department of Homeland Security  
Freedom of Information Act Office  
500 12th Street, S.W., Stop 5900  
Washington, D.C. 20536-5900

Electronic mail: [ice-foia@dhs.gov](mailto:ice-foia@dhs.gov)

RE: FOIA Appeal of Response to Request for Records re "Alternatives to Detention"  
Programs and Practices  
FOIA Reference No: 2015-ICFO-89856

Dear Sir or Madam:

This letter constitutes an appeal under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 (a)(6)(A)(ii) and 6 C.F.R. § 5.9. This appeal is on behalf of members of the San Francisco Immigrant Legal Defense Collaborative, specifically **Asian Pacific Islander Legal Outreach, The Bar Association of San Francisco, Central American Community Resource Center, Center for Gender & Refugee Studies, Dolores Street Community Legal Services, Immigration Center for Women and Children, Immigrant Legal Resource Center, Lawyers' Committee for Civil Rights of the San Francisco Bay Area, Legal Services for Children, Pangea Legal Services, and University of San Francisco Immigration and Deportation Defense Clinic**, as well as **Community Legal Services in East Palo Alto** (hereinafter "Requesters").<sup>1</sup>

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<sup>1</sup> As provided in the instructions on the FOIA Response (Exhibit B), and the statute and regulations, a copy of this appeal was timely mailed and delivered on January 14, 2016, to the Office of Principal Legal Advisor of ICE and with the Associate General Counsel at DHS. However, due to a typographical error in the delivery address, this additional copy of the appeal is being mailed and emailed to ICE and the ICE Office of Principal Legal Advisor in an abundance of caution. Aside from the change in the address and to the footnotes, the two copies of the appeal are otherwise identical in content.

On July 16, 2015, Requesters submitted a request for records pertaining to "Alternatives to Detention" programs and practices that U.S. Immigration and Customs Enforcement (ICE), an agency of the U.S. Department of Homeland Security, employs to exercise supervisory authority over an individual whom ICE is seeking to remove from the United States (hereinafter referred to as "Request"). A copy of the FOIA Request is attached as Exhibit A.<sup>2</sup> That request reasonably and specifically described the records sought, which are not otherwise publically available. After defining the terms used, Requestors requested 14 subcategories of information, enumerated alphabetically as A-N. See Exh. A at 2-5. Each subcategory requested a broad range of types of records on specific topics within the jurisdiction of ICE. Six of these categories requested "policies, protocols, guidance, training materials, and communications" regarding specific topics (subcategories A-E, H), and the remaining eight subcategories requested "any and all records," "any records," "records," or "any audits, studies, reports, analysis, or examinations" relating to eight other specific topics (Items F-G, I-N). Six of the items contained a specific reference to legal memorandum, regulations, contracts, and legal decisions (Items B, F, G, H, I, J). Each item referred to current documents, or provided a specific time range of interest.

On November 18, 2015, ICE provided a final response to the FOIA request. See Exh. B (Cover letter). The response consisted of 11 items totaling 17 pages in length. Three items were memoranda, seven were email guidance provided to officers, and one was a single page taken from an unidentified source. Some of the pages had portions withheld pursuant to FOIA exemptions (b)(6) and (b)(7)(C).

We hereby file an appeal of the response and search conducted as insufficient in respect to the documents requested for the reasons provided below. We also appeal the denial of expedited processing insofar as it affects the timing of any additional search and any future production of documents as herein requested.<sup>3</sup>

<sup>2</sup> On July 30, ICE acknowledged receipt of the FOIA request and denied the request for a fee waiver and expedited processing. On September 29, 2015, Requesters filed a timely appeal of the request for fee waiver and expedited processing. On October 26, 2015, your office reversed its prior decision and granted the fee waiver. It dismissed the request for expedited processing as moot.

<sup>3</sup> We herein incorporate by reference our arguments on Expedited Processing in our Appeal Letter dated September 29, 2015. That letter explains that expedited processing is warranted because there is an "urgency to inform the public about an actual or alleged government activity," and the request is made by organizations "primarily engaged in disseminating information." See 5 U.S.C. § 552(a)(6)(E)(v)(II). We do not dispute that the request for expedited processing is moot with respect to documents they have already been produced; however, to the extent that a grant of expedited processing would affect the speed of the additional search herein demanded or the production of any additional documents, the issue is not moot.



### THE AGENCY'S SEARCH WAS INADEQUATE

Pursuant to the FOIA, in response to a request, an agency must "review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request." 5 U.S.C. § 552(a)(3)(D). A record includes: (A) any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format; and (B) any information described under subparagraph (A) that is maintained for an agency by an entity under Government contract, for the purposes of records management. 5 U.S.C. § 552(f)(2).

The agency must show that it has conducted a search reasonably calculated to uncover all relevant documents. Hamdan v. U.S. Dep't of Justice, 797 F.3d 759, 770-71 (9th Cir. 2015). The adequacy of an agency's search is measured by a "standard of reasonableness," and is "dependent upon the circumstances of the case." Zemansky v. U.S. E.P.A., 767 F.2d 569, 571 (9th Cir. 1985) (citations omitted).

Courts have found that searches may be inadequate where "a review of the record raises substantial doubt, particularly in view of well-defined requests and positive indications of overlooked materials." Hamdan, 797 F.3d at 771. "An agency has discretion to conduct a standard search in response to a general request, but it must revise its assessment of what is 'reasonable' in a particular case to account for leads that emerge during its inquiry." See Campbell v. U.S. Dep't of Justice, 164 F.3d 20, 28 (D.C. Cir. 1998), as amended (Mar. 3, 1999); Ctr. For Nat. Sec. Studies v. U.S. Dep't of Justice, 215 F. Supp. 2d 94, 109-11 (D.D.C. 2002), aff'd in part, rev'd in part, 331 F.3d 918 (D.C. Cir. 2003). Agency searches have been deemed inadequate based on specific evidence that responsive documents exist but were not produced. See Tarullo v. U.S. Dep't of Def., 170 F. Supp. 2d 271, 275 (D. Conn. 2001); Kronberg v. U.S. Dep't of Justice, 875 F. Supp. 861, 869-71 (D.D.C. 1995).

The agency's search was inadequate. Review of the record raises substantial doubt about ICE's search and reveals the existence or likely existence of responsive documents that were not produced.

#### A. ICE did not produce responsive documents and policies internally referenced in its Response.

In particular, in this case, documents in ICE's November 18, 2015 Response themselves reference numerous records, policies, communications, and information that are responsive to the Request but not provided to Requesters. The agency should have followed these leads to identify other responsive documents. Campbell, 164 F.3d at 28. The sections below outline the referenced and unproduced information and documents in the record. We have excerpted these references, and listed the subsections of the Request to which they are responsive, in bullet point form for ease of cross-checking.

**1. Memorandum for Field Office Directors from Acting Director, dated Dec. 10, 2004 (pp. 1-2 of ICE response).**

- This document references contractors' obligation to engage in "reporting regarding the violations of their specific programs," including the Intensive Supervision Appearance Program (ISAP). Documents comprising this referenced "reporting regarding violations [of ISAP]" is responsive to Subsection D and/or E of the Request.
- This document additionally references a "National Fugitive Operations Program policy and procedure document" and states that persons violating the terms of ISAP "clearly fit[ ] the description of a fugitive for programmatic purposes." The National Fugitive Operations Program policy and procedure document is responsive to Subsection D of the Request.

**2. Memorandum for Field Office Directors and Deputy Field Office Directors dated Sept. 14, 2009 (p.3 of ICE response)**

- This document states that "[i]f ATD personnel have reason to believe that an exception to this rule is warranted in a particular case, they should contact the HQDRO-ATD Chief for authorization to apply an ankle bracelet." Communications regarding exceptions requested, granted, or denied to use an ankle bracelet on a person with certain medical conditions (including but not limited to pregnancy) would be responsive to Subsection N of the Request.

**3. Memorandum for Field Office Directors from Executive Associate Director, dated February 28, 2011 (pp. 4-5 of ICE response)**

- The second page of this document identifies two memoranda: (1) a March 8, 2005 memorandum entitled "Reporting Requirements and Management of Alternatives to Detention Program Participants,"; and (2) a June 28, 2005 memorandum entitled "Alternatives to Detention (ATD) Program Enrollment Guidance." Both are responsive to Subsection A of the Request.<sup>4</sup>
- The end of this document states, "Please contact Acting Deputy Assistant Director . . . if you have any questions or concerns." Any email queries or concerns sent to the Acting Deputy Assistant Director, and responses, regarding this memorandum would be responsive to Subsections A and/or B of the Request.

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<sup>4</sup> A third responsive memorandum is also listed but was not produced: a May 11, 2005 memorandum on "Eligibility Criteria for Enrollment into the Intensive Supervision Appearance Program (ISAP) and the Electronic Monitoring Device (EMD) Program." However, Requesters are aware that this document is available on the ICE FOIA Library website at <https://www.ice.gov/foia/library>.

**4. Email from DRO Taskings sent December 17, 2008 (p. 6 of ICE response)**

- This email contains a reference to “improving overall ATD compliance rates and Average Length in Program statistics for ATD contractor-supervised participants.” Documents regarding “compliance rates and Average Length in Program statistics” are responsive to Subsection N of the Request.

**5. Email from ERO Taskings sent Friday January 13, 2012 (p.7 of ICE response)**

- This email references a Nov. 1, 2011 reminder to field offices regarding prompt follow-up to ATD program violations. This Nov. reminder is responsive to Subsection D and/or E of the Request.
- The email references a “Standard Operating Procedures for the Intensive Supervision and Appearance Program dated August 30, 2004.” This document is responsive to Subsections A, B, C, and/or D of the Request.
- The email also references a “December 10, 2004 memorandum entitled Alternatives to Detention Recovery procedures” This document is responsive to Subsections A, B, C, and/or D of the Request.
- Finally, the email closes with the instruction, “If you have any questions, please contact your respective Deputy Assistant Director within Field Operations.” Any queries or responses following this email are responsive to Subsections A, B, C, and/or D of the Request.

**6. Email from ERO Taskings sent June 23, 2014 (p.8 of ICE response)**

- The email states, “The ATD officer will continue to evaluate the participant for compliance and potential escalation or de-escalation based upon the Multi-Aspect Removal Verification Initiative (MARVIN) procedures.” Any documents referencing or describing “MARVIN procedures” and any communications or documents concerning the “evaluat[ion of] the participant for compliance or escalation or de-escalation” are responsive to Subsections B, C, and/or D of the Request.
- The email references “standard ATD recommendations”, “Full-Service component enrollment”, and “Technology-Only component participation.” Any documents referencing, describing, explaining, or constituting these are responsive to Subsections B, C, and/or D of the Request.
- Finally, the email concludes by stating, “Please contact ATD Unit Chief-[REDACTED] . . . with any questions or concerns.” Any queries or concerns sent by ICE officers to the ATD Unit Chief, and responses, would comprise “communications” responsive to Subsections B, C, and/or D of the Request.



**7. Email from ERO Taskings sent May 15, 2015 (p.9 of ICE response)**

- This email states, "The ATD program has demonstrate great success in improving compliance rates for those aliens assigned to the program." This statement suggests that audits, studies, reports, or analysis exist regarding "compliance rates" for individuals assigned to ISAP. These would be responsive to Subsection N of the Request.
- This email also references an ISAP III contract. This contract would fall under Subsection L of the Request.

The email states, "[F]ield office will evaluate and ensure that the appropriate level of ATD is assigned based upon factors such as: supervision history, criminal history, pending charges, community ties, family ties, being a sole caregiver, and other humanitarian concerns. Upon completion of this evaluation, a trained ATD officer will assign an appropriate level of case management and technology consistent with ATD standard operating procedures." Any such evaluation or documents generated for the evaluation are responsive to Subsections A, B, and/or C of the Request.

- Finally, the email concludes, "If you require any additional information or have questions regarding this guidance, you may contact ATD Unit Chief [REDACTED]." Any emails questions/requests to the ATD Unit Chief, and responses, are responsive to Subsection A, B and/or C of the Request.

**8. Email from ERO Taskings sent Monday June 8, 2015 (pp. 11-12 of ICE response), addressing "Referrals to ATD," "Enrollment in ATD," and "ATD Case Management"**

- This email states, "Additionally, with creation of ERO ATD Monitoring Officers (AMO) in FY 2014, field offices began receiving immediate and up-to-date information and training related to the program, to include updates on expected ATD capacities and goals." Training materials and the referenced "immediate and up-to-date information" are responsive to Subsections A, B, C, and/or D of the Request.
- This email also references the approach known termed "MARVIN." Any documents referencing or describing "MARVIN procedures" meet the description in Subsections B, C and/or D of the Request.
- The email concludes by stating, "Please direct any questions to ATD Unit Chief [REDACTED] or via email at . . ." Any questions to the ATD Unit Chief, as well as responses, are responsive to Subsections A, B, C, and/or D of the Request.

**9. Email from ERO Taskings sent Friday, July 24, 2015 (pp. 13-14 of ICE response)**

- The email states that, "Once assigned to the ATD program, participants are subject to recurring case reviews . . ." Any documents or communications regarding these "case reviews" are responsive to Subsections A, B, C and/or D of the Request.
- The email concludes by stating, "If you require additional information or have questions regarding this guidance, you may contact ATD Unit Chief [REDACTED]..." Any questions or requests for additional information to the ATD Unit Chief, as well as responses, are responsive to Subsections A, B, C, and/or D of the Request.

**10. Aug. 7, 2015 Email from Unknown to Unknown, "FW: Found it....", referencing a Nov. 25, 2014 Email from ERO Taskings to FODs and DFODs, "Rio Grande Valley Alternatives to the Detention Pilot Program"**

- This email references the collection of data to determine the feasibility of expanding the pilot program. Any data collected or analysis done is responsive to Subsection N of the Request.

**B. ICE did not produce responsive documents or information referenced in other reports.**

There is further evidence in this case that the agency has not produced existing documents that are responsive. For example, on February 4, 2015, the DHS Office of Inspector General released a report, "U.S. Immigration and Customs Enforcement's Alternatives to Detention (Revised)" ("OIG-15-22") ("OIG Report").<sup>5</sup> The OIG report contains information about several ATD topics and contains several appendix items that were within the scope of the FOIA Request but were not released as part of the Response:

- The OIG Report contained a detailed description of Risk Classification Assessment (RCA) procedures. *Id.* at 11-15. Appendix D is a "Risk Classification Assessment Checklist," apparently obtained from the ENFORCE database. Appendix F contains detailed statistics regarding "Risk Classification Assessment Overrides" apparently obtained from an "ICE RCA Cumulative Report, December 2013." This information would have been responsive to subsection A of Requester's Request.
- The OIG Report also references ISAP II participation data from 2010 to 2012, which was not released in ICE's response to Requester's Request. *See id.* at 6-8. Appendix E contains detailed statistics regarding "ISAP II Termination Rates (Full-Service/Technology-Only)." All of this data appears to have been drawn from ISAP II

<sup>5</sup> A copy of the OIR Report is available at [https://www.oig.dhs.gov/assets/Mgmt/2015/OIG\\_15-22\\_Feb15.pdf](https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-22_Feb15.pdf).

Annual Reports from contract years 2010 to 2012. The data and their source reports would have been responsive to subsection B, C and I of the Request.

- The OIG Report also references correspondence or guidance related to ATD programs that was not disclosed as part of the Response. *See id.* at 8 n.3 (referencing Alternatives to Detention (ATD) Program Guidance, Executive Associate Director for Enforcement and Removal Operations, August 10, 2012; De-escalation of Alternatives to Detention Full Service Participants, Associate Director, Custody Management, January 31, 2013). This information was responsive to Requestor's requests in subsections A, B, C and D.

**C. ICE did not release records or information required to be created or maintained as a matter of law.**

The Request included records and information that are required to be created or maintained as a matter of law, but that were not released in the Response. Such information should have been released as part of the Response. *Kronberg*, 875 F. Supp. at 869-71.

For example, the following subcategories of documents requested are required to be produced as a matter of law:

- Subcategory I requested contractor reports that are required to be produced under ISAP II SOW.
- Subcategory J requested any records related to or concerning the determination of the independent government estimate for the cost of the ISAP II program, as stated in a GAO decision.
- Subcategory L requested agreement and contracts for the procurement of services and/or technology used by ICE in the ATD program between 2009 and the current date.<sup>6</sup>

In addition, within the Response itself, the Memorandum for Field Office Directors from Acting Director, dated Dec. 10, 2004 references contractors' obligation to engage in "reporting regarding the violations of their specific programs," including the Intensive Supervision Appearance Program (ISAP). *See* pages 1-2 of the ICE FOIA Response (emphasis added). No information was released in the Request regarding such reporting. Such information would have been responsive to Subcategory E.

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<sup>6</sup> ICE FOIA's website contains some contracts prior to 2014 between ICE and BI Incorporated. However, contracts after July 19, 2014, which are contained within the scope of the Request, are not otherwise publically available.



**D. It is incredible that more records do not exist that are responsive to the Request.**

It appears highly unlikely that the agency does not have any other written materials in response to the Request by Requestors, given the breadth of the ISAP program and the scope of the Request. See Ctr. For Nat. Sec. Studies, 215 F. Supp. 2d at 109-11.

In Ctr. For Nat. Sec. Studies, the plaintiffs challenged the adequacy of the Department of Justice's search for documents responsive to their request for "all policy directives and guidance issued to officials about making public statements or disclosures" about persons detained after Sept. 11, 2001 or about "sealing judicial or immigration proceedings." In response to that request, the DOJ had released only two documents: a two-page document from DOJ entitled "draft talking points" for the Attorney General; and (2) a memorandum via electronic mail from Chief Immigration Judge. The district court found that this response was inadequate on several grounds. As part of its reasoning, the court concluded that:

Finally, it is simply not credible that no other documents are responsive to Plaintiffs' request. Somehow all United States Attorneys Offices, all FBI offices, all INS offices, and all DOJ offices throughout the United States were told that matters related to those apprehended in connection with September 11, were to remain secret. How was this directive communicated? The Government never explains how widespread notification was accomplished without the use of a single document produced under FOIA.

For the foregoing reasons, the Court concludes that the Government's search for "all policy directives and guidance issued to officials about making public statements or disclosures" with respect to the detainees or about "sealing judicial or immigration proceedings" was inadequate. The Government must conduct another search.

Ctr. For Nat. Sec. Studies, 215 F. Supp. 2d at 110-11.

Likewise in this case, it appears highly unlikely that the agency has adequately searched for and produced all documents that are relevant and responsive to Requestor's Request, which seeks to investigate the "Alternatives to Detention" Program, a program that encompasses thousands of participants and ICE and ISAP personnel.

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We therefore respectfully request that you conduct another search for additional documentation in response to our Request. Thank you for your consideration and prompt attention to this request.

Sincerely,



Avantika Shastri  
Lead Attorney, San Francisco Immigrant Legal Defense  
Collaborative  
The Bar Association of San Francisco



Eunice Lee  
Co-Legal Director, Center for Gender & Refugee Studies



COMMUNITY  
LEGAL SERVICES IN  
EAST PALO ALTO

VIA ELECTRONIC MAIL

July 16, 2015

U.S. Department of Homeland Security  
FOIA/PA  
The Privacy Office  
245 Murray Lane SW  
STOP-0655  
Washington, D.C. 20528-0655  
Fax: 202-343-4011  
E-mail: foia@hq.dhs.gov

U.S. Immigration and Customs Enforcement  
Freedom of Information Act Office  
500 12th Street, S.W., Stop 5009  
Washington, D.C. 20536-5009  
Fax: 202-732-4265  
E-mail: ice-foia@dhs.gov

RE: Request under the Freedom of Information Act  
Fee Waiver Requested

Dear Sir or Madam:

This letter constitutes a request for records made pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, on behalf of the members of the San Francisco Immigrant Legal Defense Collaborative, consisting of Asian Pacific Islander Legal Outreach, The Bar Association of San Francisco, Central American Community Resource Center, Center for Gender & Refugee Studies, Dolores Street Community Legal Services, Immigration Center for Women and Children, Immigrant Legal Resource Center, Lawyers' Committee for Civil Rights of the San Francisco Bay Area, Legal Services for Children, Pangea Legal Services, and University of San Francisco Immigration and Deportation Defense Clinic, as well as Community Legal Services in East Palo Alto (hereinafter "Requestors").

The Requestors seek records pertaining to "Alternatives to Detention" programs and practices that U.S. Immigration and Customs Enforcement (ICE), an agency of the U.S. Department of Homeland Security, employs to exercise supervisory authority over an individual whom ICE is seeking to remove from the United States. Through this request, Requestors seek to inform the



public on a matter of great public concern—the treatment of immigrants, including in particular the treatment of women with children who are in removal proceedings and seeking protection from harm in their home countries. The public should have access to information regarding the use of intensive supervision, including but not limited to the use of electronic monitoring, for a vulnerable population that has been the subject of significant media coverage as well as academic and human rights reports.<sup>1</sup> Because the use of Alternatives to Detention concerns a critical function of the government on a matter of significant public interest and concern, FOIA mandates its disclosure. *See* 5 U.S.C. § 552.

### Request for Agency Records

The Requestors seek disclosure of records that were prepared, received, transmitted, collected and/or maintained by Immigration and Customs Enforcement (“ICE”) and/or its components relating or referring to the information specified below.

The Requestors ask that any records that exist in electronic form be provided in electronic format on a compact disc.

### *Definitions*

For the purpose of this request, please use the following definitions:

“Alternatives to Detention” or “ATD” refers to any program, policy, or practice in which ICE or any of its offices, programs, or components (including but not limited to Enforcement and Removal Operations) or contractors or subcontractors exercises supervisory authority over an individual whom the Department of Homeland Security has placed in Immigration Court proceedings or is otherwise seeking to remove or against whom the Department of Homeland Security has obtained or issued an order of removal. ATD includes but is not limited to the Intensive Supervision Appearance Program (ISAP, including ISAP I and ISAP II), Enhanced Supervision Reporting (ESR), and Electronic Monitoring (EM) programs.

“Immigration and Customs Enforcement” or “ICE” refers to and includes any office, program, or component of the agency, including but not limited to Enforcement and Removal Operations.

<sup>1</sup> *See, e.g.,* Kyle Barron & Cinthya Santos Briones, “No Alternative: Ankle Monitors Expand the Reach of Immigration Detention,” (Jan. 6, 2015), *available at* <https://acla.org/news/2015/01/06/no-alternative-ankle-monitors-expand-reach-immigration-detention>; Brianna Lee, “The Expensive Business Of Immigration Detention In The U.S.,” *INTERNATIONAL BUSINESS TIMES* (Sept. 11, 2014), *available at* <http://www.ibtimes.com/expensive-business-immigration-detention-us-1635018>; Editorial, “Cheaper, better alternatives to immigrant detention at the Northwest Detention Center,” *Seattle Times* (June 9, 2014), *available at* <http://www.seattletimes.com/opinion/editorial-cheaper-better-alternatives-to-immigrant-detention-at-the-northwest-detention-center/>; Kate Linthicum, “Push for cheaper alternatives to immigrant detention grows,” *L.A. TIMES* (May 31, 2014), *available at* <http://www.latimes.com/nation/la-na-immigration-detention-20140601-story.html>; Alfonso Serrano F., “ICE Slow to Embrace Alternatives to Immigrant Detention,” *New America Media* (Apr. 10, 2012), *available at* <http://newamericamedia.org/2012/04/ice-slow-to-embrace-alternatives-to-immigrant-detention.php>; Rutgers School of Law – Newark Immigrant Rights Clinic with American Friends Service Committee, *Freed but not Free: A Report Examining the Current Use of Alternatives to Immigration Detention* (July 2012), *available at* <http://www.law.newark.rutgers.edu/files/FreedbutnotFree.pdf>.

The term "records" as used herein includes but is not limited to all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audio tapes, faxes, files, e-mails, guidance, guidelines, evaluations, instructions, information analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, manuals, technical specifications, training manuals, or studies.

The term "concerning" means referring or pertaining to, describing, evidencing, addressing, commenting on, responding to, showing, analyzing, reflecting, or constituting.

### *Records Requested*

The records herein requested are those concerning:

- A. Policies, protocols, guidance, training materials, and communications regarding any requirements, standards, or factors involved in determining whether to place a person under ATD supervision. This includes but is not limited to any Risk Classification Assessment tool(s) associated with ATD.
- B. Policies, protocols, guidance, training materials, and communications related to the level of usage of ATD supervision. This request includes, but is not limited to, any increased use of ATD to supervise individuals or families whose cases are on an expedited, "surge," or "priority" docket or are otherwise prioritized or set for adjudication on an accelerated schedule before the Immigration Court, including those referenced in the March 24, 2105 Memorandum from Chief Immigration Judge Brian M. O'Leary to All Immigration Judges regarding "Docketing Practices Relating to Unaccompanied Children Cases and Adults with Children Released on Alternatives to Detention Cases in Light of the New Priorities, available <http://www.justice.gov/eoir/pages/attachments/2015/03/26/docketing-practices-related-to-uacs-and-awcatd-march2015.pdf>, and the September 10, 2104 Memorandum of Chief Immigration Judge Brian M. O'Leary regarding Docketing Practices Relating to Unaccompanied Children Cases in Light of the New Priorities, available at <http://www.justice.gov/eoir/statspub/Docketing-Practices-Related-to-UACs-Sept2014.pdf>
- C. Policies, guidance, protocols, trainings materials, and communications related to the requirements, standards, or factors considered by ICE and/or contracting companies such as BI Incorporated or GEO Group, for modifying the intensity of supervision—or ceasing supervision—under ATD.
- D. Policies, guidance, protocols, training materials, and communications related to ICE oversight or other involvement in ATD or other supervision following the placement of a person under ATD supervision.
- E. Policies, guidance, protocols, training materials, and communications related to means by which contract companies that administer ATD programs communicate with or provide or receive information from ICE officials and any agreements or practices or protocols pertaining to the sharing of any type of information about or documents pertaining to



individuals under ATD supervision between ICE and any private companies contracted to provide ATD services. This includes but is not limited to any policies, practices, or protocols for securing travel documents or any other documentation or information from persons subjected to ATD and any policies, practices, or guidelines for issuing warnings, notices, or other communications to individuals who are subject to ATD.

- F. Any and all records received, maintained, or created by any government agency or subdivision related to the creation, implementation, and oversight of the Memorandum to ICE Field Office Directors with subject line "Eligibility Criteria for Enrollment into the Intensive Supervision Appearance Program (ISAP) and the Electronic Monitoring Device (EMD) Program," sent on May 11, 2005. This includes any revised or updated memoranda that override, modify, supplement, or clarify the policies set forth in the May 11, 2005 Memorandum.<sup>2</sup> This also includes any other related policy memoranda addressing the similar subject matter in full or in part.
- G. Any records related to or concerning cost comparisons between BI Incorporated and government performance of contracts or agreements for the provision of services and products used in ISAP I and ISAP II. *See* 48 C.F.R. § 7.302 (2005), <http://www.gpo.gov/fdsys/pkg/CFR-2005-title48-vol1/xml/CFR-2005-title48-vol1-part7-subpart17-3.xml>.
- H. Policies, guidance, procedures, training, and any other documents concerning or related to the determination of the number of slots at each base year site found on B-66 of the Intensive Supervision Appearance Program (ISAP) II, Section C – Statement of Work ("ISAP II SOW").<sup>3</sup>
- I. Records of the contractor reports as required to be produced by the ISAP II SOW as follows:
  - 1. From January 2014 – present date for individuals under the jurisdiction of the San Francisco Enforcement and Removal Operations Filed Office: All "Daily Emergency Reports" as described at SOW 7.1.1.
  - 2. From January 2014 – present date: all "Weekly Average Daily Cost and Average Length in Program Reports" as described at SOW 7.1.5.
  - 3. From January 2014 – present date: all "Monthly Program Progress Reports" as described at SOW 7.1.6.
  - 4. From January 2014 – present date: all "Quarterly Program Reports," as described at SOW 7.1.7.
  - 5. From January 2009 – present date: all "Annual Reports" as described at SOW 7.1.8.

<sup>2</sup> The full text of the May 11, 2005 Memorandum is available at [http://www.ice.gov/doclib/foia/dro\\_policy\\_memos/dropolicymemoeligibilityfordroisapandemdprograms.pdf](http://www.ice.gov/doclib/foia/dro_policy_memos/dropolicymemoeligibilityfordroisapandemdprograms.pdf).

<sup>3</sup> The full text of the Statement of Work is available at <http://www.ice.gov/doclib/foia/contracts/biincorporatedhscecr09d00002.pdf>.



6. From January 2014 – present date; all “Ad Hoc Reports” as described at SOW 7.1.9.
7. From January 2014 – present date; all “DRO/Contractor Meeting Minutes” as described at SOW 7.1.10.
- J. Any records related to or concerning the determination of the independent government estimate (“IGE”) for the cost of the ISAP II program, as stated on page 4 of the Government Accountability Office (“GAO”) decision identified by file numbers B-401694; B-401694.2.<sup>4</sup>
- K. Any records related to or concerning cost overruns associated with the ISAP II program, including, but not limited to, cost overruns incurred in relation to any contracts or agreements between ICE and BI Incorporated or the Geo Group Incorporated or other contractor.
- L. Any records related to or concerning agreements or contracts between any private entities and ICE for the procurement of services and/or technology used by ICE in the ATD program during the period from 2009 through April 30, 2014, and between May 1, 2014, and the present date. This request includes any agreements or contracts between providers of ATD equipment and services – such as BI Incorporated, the Geo Group Incorporated, or any contracting company – and ICE which require ICE to purchase a minimum quantity of ATD-related equipment or a minimum amount of ATD-related services.
- M. Any records pertaining to the effects or impact of participation in the ATD program, including but not limited to any possible health effects of EM, including for those who may be pregnant, nursing, or have other health conditions.
- N. Any audits, studies, reports, analysis, or examinations related to the efficacy of ATD.

#### **Request for Expedited Processing**

Expedited processing is warranted because there is “an urgency to inform the public about actual or alleged federal government activity” by organizations “primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II). This request implicates matters of urgent public concern—namely, government policies, procedures, practices related to ATD for women and children migrants, as well as related costs, assessments, and outcomes of ATD.

There is “an urgency to inform the public” about this government activity because of heightened interest in both the government’s detention and ATD practices with respect to migrant families, and in particular women arriving with children. Further, attorneys and other services providers need to understand the relevant policies, procedures, and practices to serve this population.

The issues surrounding detention of and alternatives to detention for women and children migrants is one of heightened public concern, and warrants prioritization of this request over

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<sup>4</sup> The full text of the GAO decision is available at <http://www.gao.gov/assets/390/387382.pdf>.

other requests that were made earlier. The justifications for family detention, and the feasibility, costs, specifics, and outcomes for ATD, are matters of great current public interest. They have received extensive news coverage and attention in Congress. ATD in particular has received heightened interest in conjunction with calls to end mass family detention entirely. On June 1, thirty-three members of the Senate sent Secretary Johnson, stating that a system of mass family detention is inconsistent with our nation's "moral values" and explicitly highlighting the fact that "there are many alternatives to detention that are more human, cost-efficient, and will keep families together." Letter to Secretary Johnson from Members of the Senate (June 1, 2015), available at

[http://immigrantjustice.org/sites/immigrantjustice.org/files/Senate\\_FamilyDetentionLtr\\_DHS\\_2015\\_06\\_01.pdf](http://immigrantjustice.org/sites/immigrantjustice.org/files/Senate_FamilyDetentionLtr_DHS_2015_06_01.pdf). On May 27, 136 members of the House of Representatives sent a letter to DHS Secretary Jeh Johnson similarly asking the administration to end mass family detention in its entirety. See Letter to Secretary Johnson from Members of the House of Representatives (May 27, 2015), available at [https://lofgren.house.gov/uploadedfiles/family\\_detention.pdf](https://lofgren.house.gov/uploadedfiles/family_detention.pdf)

Moreover, on May 12, 2015, 188 immigrants' rights, faith-based, civil rights, human rights, survivor's rights, and criminal justice reform organizations, international educators, and legal service providers wrote President Obama to call for the end of family detention, arguing that detention of mothers and children is harmful and inhuman, and expressly noting the availability of "community-based alternatives to detention (ATD) – not detention – to mitigate [any flight] risk." Joint Letter to President Obama Calling for End to Family Detention (May 13, 2015), available at <http://www.hrw.org/news/2015/05/13/joint-letter-letter-president-obama-calling-end-family-detention>.

Media attention to the issue of family detention and ATD for women and children has been heightened. See, e.g., Elise Foley, "Backlash Against Mass Family Immigrant Detention Grows As Senate Democrats Pile On," *Huffington Post* (June 2, 2015), available at [http://www.huffingtonpost.com/2015/06/02/family-immigrant-detention\\_n\\_7495282.html](http://www.huffingtonpost.com/2015/06/02/family-immigrant-detention_n_7495282.html) (reporting on call to end family detention and on statements that "DHS should use alternatives to detention, such as ankle monitoring bracelets"); Representative Judy Chu, "The time to end family detention is now" (op-ed), *San Gabriel Valley Tribune* (May 29, 2015), available at <http://www.sgvtribune.com/opinion/20150529/the-time-to-end-family-detention-is-now-judy-chu> ("DHS should implement community-based alternatives to detention that cost much less and have been proven to be effective."); Molly Hennessy-Fiske, "Democrats to Homeland Security: Free migrant families from 'jail-like' sites," *Los Angeles Times* (May 27, 2015), available at <http://www.latimes.com/nation/nationnow/la-na-immigrant-family-detention-20150527-story.html>; Caroline May, "House Dems Call for End to Family Detention for Illegal Immigrants," *Breitbart News* (May 27, 2015), available at <http://www.breitbart.com/big-government/2015/05/27/house-dems-call-for-end-to-family-detention-for-illegal-immigrants/>; Ester Yu-His Lee, "The Movement To End Immigrant Family Detention Is Picking Up Steam. Here's Why," *Think Progress* (May 29, 2015) (discussing alternatives to detention and call to end family detention).

In addition, organizational requesters include those that are "primarily engaged in disseminating information." § 552(a)(6)(E)(v)(II). As explained in the section below, the organizations listed below conduct outreach, public education, and training, reaching a broad audience in their local



communities and nationwide. Information obtained through this FOIA will contribute to their public materials, including reports, newsletters, handbooks, and/or briefings, which they will make available through dissemination and posting on their websites.

### The Requesters

Founded in 1975, **Asian Pacific Islander Legal Outreach (APILO)** is a community-based, social justice organization serving the Asian and Pacific Islander, and other communities of the Greater Bay Area. With offices in Oakland and San Francisco, its work is focused in the areas of violence against women/family law, immigration and immigrant rights, senior law and elder abuse prevention, the rights of those with disabilities, anti-human trafficking, youth violence prevention, affordable housing preservation and tenants' rights, and other social justice issues. Its mission is to provide culturally competent and linguistically appropriate legal representation, social services, and advocacy for the most marginalized segments of the community including low-income women, seniors, recent immigrants, and youth. Its diverse staff provides holistic legal, social, and educational services in more than a dozen languages.

**The Bar Association of San Francisco (BASF)** champions equal access to justice and promotes humanity, excellence, and diversity in the legal profession. It provides legal services to disadvantaged and underserved individuals in San Francisco, and creates opportunities for legal service in the community and encourages participation by its members. BASF houses the lead attorney coordinator position for the SFILDC and administers the pro bono attorney of the day (AOD) program, which allows unrepresented individuals appearing before the San Francisco Immigration Court to briefly consult with experienced immigration attorneys on a pro bono basis. The AOD then appears as "friend of the court" with the unrepresented individuals at master calendar hearings. BASF also administers the Volunteer Immigration Program (VIP), which matches low-income unrepresented individuals in non-detained immigration court proceedings with pro bono attorneys. VIP offers opportunities for full scope representation and mentoring. BASF distributes and publishes various educational and professional materials online and in paper format to its members and other practitioners.

Founded in 1986 by Salvadorans fleeing the Salvadoran Civil War, **Central American Resource Center (CARECEN)** was founded to address the needs of Salvadorans and other Central Americans who fled the region amid the civil wars, political repression, and counter-insurgencies of the 1980s. Today CARECEN is a multi-faceted community organization that empowers and responds to the needs, rights, and aspirations of Latino, immigrant, and under-resourced families in the Bay Area, building community leadership to pursue equity and justice. We advocate for immigrant rights, juvenile justice, and Latino health rights. We are committed to strengthening our cultural, social, and historical ties to Central America and countries of origin. Our social services include the: Immigration Legal Program, Second Chance Youth Program and Tattoo Removal Clinic, Family Wellness, Health Promotion, and Community Building.

**The Center for Gender & Refugee Studies (CGRS)**, housed at the University of California Hastings College of the Law, works to protect the fundamental human rights of refugees--with a



focus on women and children--through litigation, scholarship, expert consultations, and the development of policy recommendations. Attorneys at the Center include authors of scholarly books and law review articles regarding asylum, experts who advise other attorneys representing asylum seekers, and practicing attorneys who represent asylum seekers throughout the United States. CGRS conducts multiple national trainings each year, including both in-person and web-based trainings, and has published comprehensive studies documenting the procedures and treatment of women and child asylum seekers in the United States. Its reports, studies, and policy briefs are made available via publication in law journals or by academic and/or trade press, via distribution to email list-serves and individuals, and/or on its public website. Each year, CGRS provides direct assistance in several hundred cases of asylum seekers, including many women and children from Mexico and Central America. Its assistance in these cases typically includes the dissemination of relevant materials compiled and/or produced by CGRS. CGRS will make widely available to the public information requested through this FOIA via its website and/or by other means discussed above.

**Community Legal Services in East Palo Alto (CLSEPA)** provides legal assistance to low-income individuals and families in East Palo Alto and surrounding communities. Its immigration law practice provides direct legal representation to hundreds of adults and children each year. It has played a key role in responding to the needs that have arisen in connection with the expedited dockets for unaccompanied minors and families who recently arrived in the United States and have cases pending before the San Francisco Immigration Court. In addition to its provision of direct legal services to children and families on the expedited dockets of the San Francisco Immigration Court, CLSEPA helps staff the "Attorney of the Day" (AOD) program through the Bar Association of San Francisco, which involves having a pro bono attorney or team of attorneys in the courtroom for master calendar hearings, including in particular those conducted for the expedited dockets. Among other tasks, AODs assist unrepresented individuals in seeking continuances to allow time to secure counsel and prepare their cases for presentation to the immigration court. CLSEPA is also involved in training other attorneys to serve as AODs for the expedited docket. CLSEPA maintains a website, <http://www.clsepa.org>, and additionally disseminates information about immigration court matters and the expedited dockets for unaccompanied minors and families through community presentations and through its partnerships with the private pro bono bar. CLSEPA is located in East Palo Alto, California.

**Dolores Street Community Services (DSCS)** provides community outreach services and pro bono deportation defense to low-income immigrants. DSCS is a registered non-profit organization and an active participant in the San Francisco Immigrant Legal and Education Network ("SFLEN"), which supports immigrants facing deportation in removal proceedings and disseminates information to the public through trainings and workshops as well as published educational and informational materials. DSCS represents numerous detained and formerly detained individuals who are seeking protection from persecution and torture in their countries of origin, many of whom are either subject to the Intensive Supervision Appearance Program or Alternatives to Detention.

Founded in 1979, the **Immigrant Legal Resource Center (ILRC)** is a national non-profit resource center that provides legal training, educational materials, publications, and advocacy support to individuals and groups assisting low-income persons with immigration matters. The



ILRC works with a broad array of individuals, agencies, and institutions including immigration attorneys and advocates, criminal defense attorneys, civil rights advocates, social workers, law enforcement, judges, and local and state elected officials.

The **Immigration Center for Women and Children (ICWC)** is a non-profit legal organization providing affordable immigration services to underrepresented immigrants in California. ICWC strives to provide security and stability for children who are abused, abandoned or neglected and for immigrants who are victims of domestic violence, sexual assault and other violent crimes. ICWC has locations in three metropolitan areas of California to better serve underserved communities throughout the state. In 2004, ICWC opened its doors in Los Angeles. ICWC replicated its model, and launched its San Francisco office in 2010. ICWC inaugurated its San Diego office in 2012, and its Oakland office in 2015. Using U.S. federal legislation, ICWC provides immigration legal services (U and T Visas, VAWA, and SIJS) to immigrants who are victims of crimes. The resulting immigration benefits allow women to permanently leave their abusers and create safe environments for families. ICWC's overall goal is to assist these victims of domestic violence, human trafficking, sexual assault, child abuse and other violent crimes in escaping abusive relationships, live in safety, and become self-sufficient.

**Lawyers' Committee for Civil Rights of the San Francisco Bay Area (LCCR)** combines direct legal services, policy advocacy and impact litigation strategies to advance the rights of immigrants, refugees and communities of color. We marshal the resources of the private bar to identify legal issues and address barriers to full inclusion in society for migrant, minority and low-income communities. In addition to defending immigrants' civil rights, a cornerstone of our work is our Asylum Program, now more than 30 years old, which pairs low-income asylum seekers with mentored pro bono counsel, who are trained and supported by Lawyers' Committee in their representation of the individuals we serve. Within the Asylum Program, Lawyers' Committee represents unaccompanied minors and families, including single parents with children, in their quest for immigration relief. Lawyers' Committee often uses the results of Freedom of Information Act (FOIA) requests in order to provide comprehensive representation to our clients. Notably, the Lawyers' Committee secured a key ruling in a recent Freedom of Information Act (FOIA) case against the federal government to enforce the right of asylum seekers and those who represent them to have access to Asylum Officers' interview notes. The decision came in a lawsuit that charged the government with violating FOIA by withholding asylum officer interview notes from applicants and their attorneys. The judge agreed that such notes are not exempt from FOIA and are crucial to fair representation in immigration proceedings.

Founded in 1975 as a nonprofit organization, **Legal Services for Children (LSC)** is one of the first non-profit law firms in the country dedicated to advancing the rights of youth. LSC's mission is to ensure that all children in the San Francisco Bay Area have an opportunity to be raised in a safe and stable environment with equal access to the services they need to become healthy and productive young adults. Our practice includes foster care, guardianship, education and immigration cases.

**Pangea Legal Services** is a nonprofit organization that provides low-cost and free legal services low-income immigrants at risk of deportation. In addition to direct legal services, Pangea also

advocates on behalf of the immigrant community through policy advocacy, education, and legal empowerment efforts. Pangea distributes a quarterly newsletter; has participated in national webinars, conferences, and international human rights forums; and has been featured in reports by Univision, Human Rights Watch, the Daily Law Journal, and The New Yorker.

The **University of San Francisco School of Law Immigration and Deportation Clinic** is one of the only clinics in the nation focused on representing unaccompanied alien children in their immigration cases. It represents children from all over California, who fall within the jurisdiction of the San Francisco Immigration Court, in their asylum and special immigrant juvenile status cases. In addition to providing pro bono legal services to children, it also represents San Francisco families who are recent arrivals in the United States and are currently in removal proceedings.

#### Limitation or Waiver of Search and Review Fees

The undersigned request a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) ("fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . educational or noncommercial scientific institution . . . or a representative of the news media") and 6 C.F.R. § 5.11(d)(1) (search fees shall not be charged to "representatives of the news media").

The information sought in this request is not sought for a commercial purpose. Requestors are primarily non-profit organizations that intend to disseminate the information gathered by this request to the public at no cost, including through the Requestors' websites and social media.

The organizations in the SFILDC and CLSEPA regularly disseminate information to private, government, and nonprofit legal practitioners and members of the public and media through trainings, written advisories, reports, newsletters, blogs, resource libraries, and action alerts. See e.g., [www.ilrc.org](http://www.ilrc.org); <http://cgrs.uchastings.edu/>; <http://www.pangealegal.org/>; <http://www.clsepa.org/news/>; <http://www.dsos.org/content/blogcategory/40/79/>; <http://www.lccr.com/resource-library/reports/>; [www.sfbar.gov/sfildc](http://www.sfbar.gov/sfildc); <http://earecensf.org/blog.html>; <http://icwclaw.org/news/>; . The Requestors may also compile a report or other publication on the government's treatment of immigrants based on information gathered through this FOIA.

The "term 'a representative of the news media' means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii). The statutory definition does not require that the requestor be a member of the traditional media. As long as a requestor meets the definition in any aspect of its work, it qualifies for limitation of fees under this section of the statute. The Requestors qualify as a "representative of the news media" under the statutory definition, because they routinely gather information of interest to the public, use editorial skills to turn it into distinct work, and distribute that work to the public. See *Electronic Privacy Information Center v. Department of Defense*,



241 F. Supp. 2d 5 (D.D.C. 2003) (non-profit organization that gathered information and published it in newsletters and otherwise for general distribution qualified as representative of news media for purpose of limiting fees). Courts have reaffirmed that non-profit requestors who are not traditional news media outlets can qualify as representatives of the new media for the purposes of the FOIA, including after the 2007 amendments to the FOIA. *See, e.g., ACLU of Washington v. U.S. Dep't of Justice*, No. C09-0642RSL, 2011 WL 887731, at \*18 (D. Wash. Mar. 10, 2011) (finding that the ACLU qualifies as a "representative of the news media"). Accordingly, any fees charged must be limited to duplication costs.

#### Waiver or Reduction of All Costs

The undersigned Requestors seek a waiver or reduction of all costs pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), as "[d]ocuments shall be furnished without any charge . . . if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." *See also* 6 C.F.R. § 5.11(k).

The public interest fee waiver provision "is to be liberally construed in favor of waivers for noncommercial requestors." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987). The Requestor need not demonstrate that the records would contain evidence of misconduct. Instead, the question is whether the requested information is likely to contribute significantly to public understanding of the operations or activities of the government, good or bad. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003). Disclosure of the information and report sought is in the public interest and will contribute significantly to the public's understanding of the treatment of immigrants subjected to intensive supervision such as electronic monitoring and other aspects of Alternatives to Detention. This is an increasingly pressing matter as courts have placed limits on the use of detention. *See, e.g., Order, RILR v. Johnson*, No. 15-cv-11 (Feb. 20, 2015). The information sought will be critical to further inform the public regarding the treatment of recently arrived immigrants in immigration court proceedings and whether Alternatives to Detention are being employed in appropriate circumstances and in an appropriate manner. The requested records relate directly to the operations or activities of the government that potentially impact fundamental rights and freedoms. The records are not sought for commercial use, and the Requestors plan to disseminate the information disclosed through print and other media to the public at no cost. As demonstrated above, the Requestors have both the intent and ability to convey any information obtained through this request to the public.

The Requestors state "with reasonable specificity that [their] request pertains to operations of the government," and "the informative value of a request depends not on there being certainty of what the documents will reveal, but rather on the requesting party having explained with reasonable specificity how those documents would increase public knowledge of the functions of the government." *Citizens for Responsibility and Ethics in Washington v. U.S. Dept. of Health and Human Services*, 481 F. Supp. 2d 99, 107-109 (D.D.C. 2006). In the event a waiver or reduction of costs is denied, please notify me in advance if the anticipated costs exceed \$100.

### Conclusion

In accordance with President Barack Obama's January 21, 2009 Memorandum regarding the Freedom of Information Act, "[a]ll agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA." Memorandum, Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 21, 2009). The President's Memorandum makes clear the importance of prompt and full disclosure of documents requested under the FOIA. Every effort should be made by the agency to disclose requested records and not withhold information that could be released to the public without compromising a significant government interest. The undersigned Requestors accordingly ask that this request will be considered in light of President Obama's directive regarding transparency and open government.<sup>5</sup>

We look forward to your reply to the records request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I). Please contact Avantika Shastri at (415) 782-9000 x. 8661 or Eunice Lee at (415) 581-8836 with any questions. Please supply all records to:

Avantika Shastri  
Lead Attorney, San Francisco Immigrant Legal Defense Collaborative  
Bar Association of San Francisco  
301 Battery Street, Third Floor  
San Francisco, CA 94111

If this request is denied in whole or in part, please justify all redactions by reference to specific FOIA exemptions. Please specify the search that was undertaken to locate records responsive to this request. We expect the government to release all reasonably segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information or deny a waiver of fees.

Thank you for your consideration and prompt attention to this request.

Sincerely,

s/Avantika Shastri

Avantika Shastri  
Lead Attorney, San Francisco Immigrant Legal Defense Collaborative  
Justice and Diversity Center  
Bar Association of San Francisco

s/Eunice Lee

Eunice Lee  
Co-Legal-Director, Center for Gender & Refugee Studies

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<sup>5</sup> This is not a Privacy Act request and therefore notarized signatures have not been included.



*Freedom of Information Act Office*

U.S. Department of Homeland Security  
500 12<sup>th</sup> St SW, Stop 5009  
Washington, DC 20536



**U.S. Immigration  
and Customs  
Enforcement**

November 18, 2015

Avantika Shastri  
SFILDC  
301 Battery Street, 3rd Floor  
San Francisco, CA 94111

**RE: ICE FOIA Case Number 2015-ICFO-89856**

Dear Ms. Shastri:

This letter is the final response to your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated July 16, 2015. You have requested copies of the following:

Records pertaining to "Alternatives to Detention" programs, including: A. Policies, protocols, guidance, training materials, and communications regarding any requirements, standards, or factors involved in determining whether to place a person under ATD supervision. This includes but is not limited to any Risk Classification Assessment tool(s) associated with ATD. B. Policies, protocols, guidance, training materials, and communications related to the level of usage of ATD supervision. This request includes, but is not limited to, any increased use of ATD to supervise individuals or families whose cases are on an expedited, "surge," or "priority" docket or are otherwise prioritized or set for adjudication on an accelerated schedule before the Immigration Court. C. Policies, guidance, protocols, trainings materials, and communications related to the requirements, standards, or factors considered by ICE and/or contracting companies such as BI Incorporated or GEO Group, for modifying the intensity of supervision or ceasing supervision under ATD. D. Policies, guidance, protocols, training materials, and communications related to ICE oversight or other involvement in ATD or other supervision following the placement of a person under ATD supervision. E. Policies, guidance, protocols, training materials, and communications related to means by which contract companies that administer ATD programs communicate with or provide or receive information from ICE officials and any agreements or practices or protocols pertaining to the sharing of any type of information about or documents pertaining to individuals under ATD supervision between ICE and any private companies contracted to provide ATD services. This includes but is not limited to any policies, practices, or protocols for securing travel documents or any other documentation or information from persons subjected to ATD and any policies, practices, or guidelines for issuing warnings, notices, or other communications to individuals who are subject to ATD. F. Any and all records received, maintained, or created by any government agency or subdivision related to the creation, implementation, and oversight of the Memorandum to ICE Field Office Directors with subject line "Eligibility Criteria for Enrollment into the Intensive Supervision Appearance Program (ISAP) and the Electronic Monitoring Device (EMD) Program," sent on May 11, 2005. This

Exhibit B



*Freedom of Information Act Office*

U.S. Department of Homeland Security  
500 12<sup>th</sup> St SW, Stop 5009  
Washington, DC 20536



## U.S. Immigration and Customs Enforcement

includes any revised or updated memoranda that override, modify, supplement, or clarify the policies set forth in the May 11, 2005 Memorandum. This also includes any other related policy memoranda addressing the similar subject matter in full or in part. G. Any records related to or concerning cost comparisons between BI Incorporated and government performance of contracts or agreements for the provision of services and products used in ISAP I and ISAP II. H. Policies, guidance, procedures, training, and any other documents concerning or related to the determination of the number of slots at each base year site found on B-66 of the Intensive Supervision Appearance Program (ISAP) II, Section C - Statement of Work ("ISAP II SOW"). I. Records of the contractor reports as required to be produced by the ISAP II SOW as listed in the original request. J. Any records related to or concerning the determination of the independent government estimate ("IGE") for the cost of the ISAP II program, as stated on page 4 of the Government Accountability Office ("GAO") decision identified by file numbers B-40 1694; B-40 1694.2; Sections K, L, M, N in orig. request.

ICE has considered your request under the FOIA, 5 U.S.C. § 552.

A search of the ICE Office of Enforcement and Removal Operations (ERO) and the Office of Acquisitions (OAQ) for records responsive to your request produced 17 pages that are responsive to your request. After review of those documents, I have determined that portions of 17 pages will be withheld pursuant to Exemptions (b)(6), (b)(7)(C) of the FOIA as described below.

ICE has applied Exemptions (b)(6) and (b)(7)(C) to protect from disclosure names and identification numbers of law enforcement personnel.

**FOIA Exemption 6** exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right privacy. The types of documents and/or information that we have withheld may consist of social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are considered personal. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

**FOIA Exemption 7(C)** protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them

## **EXHIBIT E**

*Freedom of Information Act Office*

U.S. Department of Homeland Security  
500 12<sup>th</sup> Street, SW, Stop 5009  
Washington, DC 20536-5009



**U.S. Immigration  
and Customs  
Enforcement**

March 16, 2017

Avantika Shastri  
SFILDC  
301 Battery Street, 3rd Floor  
San Francisco, CA 94111

**RE: OPLA14-1118, 2015-ICFO-89856  
ICE FOIA Case Number 2016-ICAP-00256**

Dear Ms. Shastri:

This letter is the final response to your Freedom of Information Act (FOIA) Appeal on remand to the U.S. Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE) where you appealed the adverse determination of your request dated January 19, 2016. You have requested records pertaining to "Alternatives to Detention" programs, including:

- A. Policies, protocols, guidance, training materials, and communications regarding any requirements, standards, or factors involved in determining whether to place a person under ATD supervision. This includes but is not limited to any Risk Classification Assessment tool(s) associated with ATD.]
- B. Policies, protocols, guidance, training materials, and communications related to the level of usage of ATD supervision. This request includes, but is not limited to, any increased use of ATD to supervise individuals or families whose cases are on an expedited, "surge," or "priority" docket or are otherwise prioritized or set for adjudication on an accelerated schedule before the Immigration Court.
- C. Policies, guidance, protocols, trainings materials, and communications related to the requirements, standards, or factors considered by ICE and/or contracting companies such as BI Incorporated or GEO Group, for modifying the intensity of supervision-or ceasing supervision-under ATD.
- D. Policies, guidance, protocols, training materials, and communications related to ICE oversight or other involvement in ATD or other supervision following the placement of a person under ATD supervision.
- E. Policies, guidance, protocols, training materials, and communications related to means by which contract companies that administer ATD programs communicate with or provide or receive information from ICE officials and any agreements or practices or



protocols pertaining to the sharing of any type of information about or documents pertaining to individuals under ATD supervision between ICE and any private companies contracted to provide ATD services. This includes but is not limited to any policies, practices, or protocols for securing travel documents or any other documentation or information from persons subjected to ATD and any policies, practices, or guidelines for issuing warnings, notices, or other communications to individuals who are subject to ATD.

- F. Any and all records received, maintained, or created by any government agency or subdivision related to the creation, implementation, and oversight of the Memorandum to ICE Field Office Directors with subject line "Eligibility Criteria for Enrollment into the Intensive Supervision Appearance Program (ISAP) and the Electronic Monitoring Device (EMD) Program," sent on May 11, 2005. This includes any revised or updated memoranda that override, modify, supplement, or clarify the policies set forth in the May 11, 2005 Memorandum. This also includes any other related policy memoranda addressing the similar subject matter in full or in part.
- G. Any records related to or concerning cost comparisons between BI Incorporated and government performance of contracts or agreements for the provision of services and products used in ISAP I and ISAP II.
- H. Policies, guidance, procedures, training, and any other documents concerning or related to the determination of the number of slots at each base year site found on B-66 of the Intensive Supervision Appearance Program (ISAP) II, Section C - Statement of Work ("ISAP II SOW").
- I. Records of the contractor reports as required to be produced by the ISAP II SOW as listed in the original request.
- J. Any records related to or concerning the determination of the independent government estimate ("IGE") for the cost of the ISAP II program, as stated on page 4 of the Government Accountability Office ("GAO") decision identified by file numbers B-40 1694; B-40 1694.2; Sections K, L, M, N in orig. request.

We have considered your request under the FOIA, 5 U.S.C. § 552. A search of the ICE Office of Acquisitions, the ICE Office of Enforcement and Removal Operations and the ICE Office of training and Development for records responsive to your request produced 308 pages that are responsive to your request. After review of those documents, ICE has determined that portions of 308 pages will be withheld pursuant to Exemptions of the Privacy Act and FOIA as described below.

~~FOIA Exemption 6~~ exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right privacy. The types of documents and/or information that we have withheld may consist of social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a

third party that are considered personal. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

**FOIA Exemption 7(C)** protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination.

**Exemption 7(E)** protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. I determined that disclosure of law enforcement systems checks could reasonably be expected to risk circumvention of the law. Additionally, the techniques and procedures at issue are not well known to the public.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge.<sup>1</sup>

If you need to contact our office about this matter, please refer to FOIA case number **2016-ICAP-00256**. This office can be reached at (866) 633-1182.

Sincerely,

A handwritten signature in cursive script, appearing to read "Meronica D. Stoner" with a small "for" written below it.

Catrina M. Pavlik-Keenan  
FOIA Officer

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<sup>1</sup> 6 CFR § 5.11(d)(4).